

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.Nos.1142 and 1225 of 2015

COMMON ORDER :

These Revisions are filed by the same party who is plaintiff in OS.No.120 of 2009 challenging separate orders dt.30.12.2014 in IA.No.521 of 2014 in OS.No.120 of 2009 and IA.No.66 of 2013 in OS.No.120 of 2009, respectively.

2. It appears that a suit for perpetual injunction has been filed by petitioner herein against respondents. Issues were framed. Trial commenced. The plaintiff's side evidence was closed.

3. Thereafter, on defendants' side DW.1 was examined. Subsequently, affidavit-in-lieu of Chief-examination was filed by DW.2.

4. The matter was posted on 26.11.2012 for cross-examination of DW.2 by plaintiff, but it was not done on the said date. Earlier thereto, it appears that on 19.11.2002 the matter was posted for cross-examination of DW.2, and because he was not cross-examined on that date the matter was adjourned to 26.11.2012 for that purpose on payment of costs of Rs.200-00. On 26.11.2012, neither the costs were paid nor DW.2 was cross-examined. So the Court recorded on the docket that cross-examination of DW.2 is nil.

5. Thereafter, it appears that on 30.01.2013, IA.No.67 of 2013 was filed by petitioner to re-call DW.2 for the purpose of cross-examination. After about a year, the same was dismissed for non-prosecution on 09.04.2014.

6. The petitioner filed IA.No.66 of 2013 to re-open the evidence of DW.2 for the purpose of cross-examination in interest of justice. While this was pending, another IA.No.521 of 2014 was filed for the same purpose.

7. In IA.No.66 of 2013, the petitioner contended that on 26.11.2012, the matter was posted for cross-examination of DW.2; counsel had to attend the Andhra Pradesh Co-operative Tribunal, Hyderabad to submit arguments in CTA.No.116 of 2011; and, therefore cross-examination of DW.2 was not done.

8. In IA.No.521 of 2014, it is contended that petitioner could not attend court on 09.04.2014, since he had a stomach-ache and was indisposed.

9. By separate Orders, the Court below dismissed the same with identical reasons stating that earlier IA.No.67 of 2013 had been filed to re-call DW.2 for purpose of cross-examination; that it was dismissed on 09.04.2014 for non-prosecution; the record indicates that in spite of several opportunities being granted to petitioner by imposing costs, petitioner did not utilize the same resulting in dismissal of IA.No.67 of 2013 for default;

although more than one year time was granted to petitioner, he did not show any interest to prosecute that IA even after costs were imposed and now the present applications are filed to re-open the evidence of DW.2. The Court below held that there are no *bona fides* and the reasons stated by petitioner are not believable.

10. The counsel for petitioner now contends that the affidavit-in-lieu of Chief-examination filed on behalf of DW.2 had not been served on petitioner/plaintiff at all and that was why petitioner could not cross-examine DW.2. This plea was not raised in the affidavit filed in support of both IA.No.66 of 2013 and I.A.No.521 of 2014 and so this contention cannot be raised by him.

11. The suit is of the year 2009.

12. The counsel for petitioner has not disputed the fact that orders had been passed earlier for re-call of DW.2 to face cross-examination at the instance of petitioner on payment of costs, but the petitioner did not utilize the said opportunities, resulting in IA.No.67 of 2013 filed to re-call DW.2 being dismissed for default.

13. It appears that petitioner's sole interest in filing these Revisions is to drag on the proceedings. I do not see any merit in the Revisions and the same are accordingly dismissed. No order as to costs.

14. Miscellaneous petitions, pending if any in these

Revisions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 31-03-2015

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